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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/101,846	07/17/1998	LOTHAR FINZEL	P-981197	1129

7590

01/28/2002

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EXAMINER

HENRY, JON W

ART UNIT

PAPER NUMBER

2872

DATE MAILED: 01/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/101,846

Applicant(s)

FINZEL ET AL.

Examiner

Jon W. Henry

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-47, 49, 50, 53 and 56-73 is/are pending in the application.
- 4a) Of the above claim(s) 2-47, 49, 50, 53 and 56-71 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 72 and 73 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group 1 and species (a) in Paper No. 13 is again acknowledged. Claims 2-47, 49, 50, 52, 53, and 56-71 stand finally withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected inventions.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 43 (see Fig. 7).

Applicants' remarks that replacement sheets were included in the last facsimile transmission appear to be incorrect. Ten pages were sent and ten pages were received, but no replacement sheets were included. In any case, no replacement sheets are in the file, and correction is still required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 73 and 72 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 73 was amended after final rejection to recite plural "optical fibre cables." Claim 73, lines 8-15 now recite "each of the lead-in spigots being a pipe tightly fitted on the closure body, each of optical -fibre cables being selected from an optical waveguide minicable and an optical wave microcable, respectively having a pipe and waveguides selected from optical

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waveguides, waveguide strips and optical waveguide bundles loosely introduced into the pipe, said cables being received in the cable lead-in units with the pipe of each spigot engaging the pipe of the optical-fibre cable disposed therein and having a sealing connection of the pipe of the spigot to the pipe of the cable for sealing off the pipe of each cable.”

It appears the “respectively having a pipe” refers to a “cable” pipe 43 and “respectively” is intended to indicate each cable, actually a minicable or microcable, has an associated (cable) “pipe.” With regard to Figs. 6 and 7 (pages 12 and 13 of the specification), it appears cable lead-in unit, cable lead-in spigot, and (spigot) “pipe” all refer to pipe 13 of Fig. 6. It may be that “cable lead-in unit” of the specification is intended to include adaptation sleeve 87 but it clearly does not in the present specification, pages 12 and 13. Therefore, it is unclear how reference numeral 13 is associated directly with a “pipe,” other than “cable” pipe 43.

Further, in that regard, the recitations of claim 72 (that depends from claim 73) relates to page 2a, lines 1-20, that also fails to clarify if the various connection techniques are intended to relate to the abutting “pipes” 11 and 13 or the pipe(s) joining adaptation sleeves 87. Additionally, in claim 72, the phrase “a sealing connection of the pipe connection technology “ is unclear because the phrase “of the pipe connection technology” is strange and appears without proper antecedent, as well as because it is unclear what is being connected to what, that is, what is being “sealed.” Certainly, “the pipe” of claim 72, line 12, is ambiguous. For all of the above reasons, claims 72 and 73 are unclear.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 73 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finzel.

Finzel discloses an optical fibre transmission system comprising a cable closure with a cable body 1, excess length depositories, for cable waveguides, cable lead-in units, spigots, pipes 5, a sealed closure cover 4, cable pipes 25 and cables 25. Cable pipes 25 may be sealed in spigots 5, as by a bushing seal (see Finzel, page 4, lines 10-13).

The one-piece construction of pipes 5 with the closure body 1 of Finzel is deemed to be a construction "tightly fitted on the closure body," in fact as closely as possible. Alternatively, if somehow the construction were deemed not "tightly fitted" because they are formed in one piece, it would have been obvious to one of ordinary skill in the art to make the pipes 5 separately and then tightly seal them together because it is conventional generally to form projecting pipe sections separately and unite them to containers in lieu of one-piece construction because of difficulties of one piece construction of such complicated shapes. Additionally, that holding of obviousness is in close accord with case law regarding the obviousness of "making separable." In re Dulberg, 289 F.2d 522, 523, 129 USPQQ 348, 349 (CCPA 1961); MPEP 2144.04 V. C. One would expect such a pipe to be tightly fitted to seal properly. Although Finzel does not disclose how pipe 25 is secured to pipe section 5, adhesive bonding would have been obvious as a conventional securing means that would assure the desired relationship at all times during shipping and use, regardless of tolerance of manufacture. Additionally, although Finzel does not disclose splice organizations, splice organizations are conventional in cable connection and storage systems of coiled cables and therefore such would have been obvious. Furthermore,

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minicables and microcables are conventional optical cables of the type of Finzel and therefore the choice of either of those types of cables would have been obvious. Additionally, if “minicable and microcables” were deemed to denote a variation in size from “cables” as broadly disclosed by Finzel, they would have been obvious in accordance with various case law clarifying the obviousness of variations in size. See, e.g., In re Rinehart, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976); Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. Denied, 469, U.S. 830, 225 USPQ, 232 (1984); MPEP 21444.04 IV. A.

With regard to claim 73, it would be obvious to one of ordinary skill in the art that a pipes 5 and 25, to join pipes 5 and 25 of Finzel tightly fitted” as set forth previously either by rigid connections or a tightly sealed sliding connection to protect the interior of closure 1 from external water and particles because both are common conventional joining techniques. In particular, with regard to rigid connections, welding, soldering, and adhesive bonding are all conventional pipe joining techniques and therefore any of them would have been obvious, barring a showing to the contrary.

7. Claim 72 is further rejected under 35 U.S.C. 103(a) as being unpatentable over Finzel, as applied to claims above, and further in view of Grenier.

If a reference really be considered required to demonstrate the conventionality and obviousness of welding, soldering, and/or adhesive bonding for pipe connections, then Grenier clearly provides such teachings (see, e.g., column 1, lines 10-15 or Grenier).

Response to Applicant's Arguments

8. Applicants' remarks fail to clarify how element 13 is intended to define a “pipe,” as appears intended to correspond to the claims, and in particular if such a pipe relates to adaptation

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sleeve 87. Applicants' remarks, page 4, lines 24-27, do finally assert adaptation sleeve 87 is part of unit 13, but those remarks still fail to identify unit 13 as a "pipe."

Additionally, applicants' remarks fail to explain why elements 5 and 25 do not read on or make obvious a connecting pipes arrangement as set out in the claims and as explained in items 6 and 7 above. Applicants' remarks recognize that a connecting pipes arrangement as taught by Finzel would not prevent dirt entering the closure body in the same manner the connecting pipes arrangement disclosed by applicants' does. However, applicants' remarks fail to point out any claim language that defines that distinction, and, in fact, none exists. In other words, applicants are arguing a distinction that is not in the claims. Additionally, applicants' remarks appear to even refer to specific language that is not in the claims. For example, applicants' remarks, page 5, lines 23-25, recites, "...it is submitted that there is not a 'first' connection between a pipe of the cable and the pipe 25 as claimed [in Finzel]." However, neither claim 72 nor claim 73 (from which claim 72 depends) recites a "first" connection. In fact, only dependent claim 72 recites *any* "connection," even though applicants' remarks appear directed to *both* claims 72 and 73 being allowable based on the alleged distinction.

Apart from the possible distinction regarding claim 72 noted above, applicants' remarks fail to provide any separate argument regarding the rejection of claim 72, and, in particular, fail to allege any specific error in the application of the teachings Grenier to those of Finzel. In fact, the use of welding, soldering, and adhesive bonding to connect pipes is so well known as to have been obvious on its face. However, the examiner has also provided the reference to Grenier to further clarify the obviousness of soldering, welding, and/or adhesive bonding for pipe connections.

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Conclusion

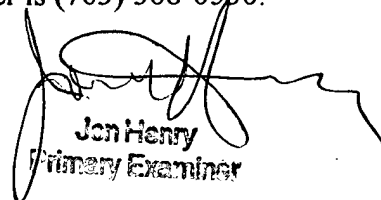
8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9.. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon W. Henry whose telephone number is (703) 305-6106. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cassandra Spyrou can be reached on (703) 308-1687. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0530.

jwh
January 14, 2002


Jon Henry
Primary Examiner